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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SEMIU ABIODUN KADIKU, A29887187,

Petitioner,

-v-

DECISION AND ORDER
05-CV-0574Sr

PETER J. SMITH, CHARLES MULE,
MICHAEL CHERTOFF, and ALBERTO GONZALEZ,

Respondents.

Petitioner Semiu Abiodun Kadiku, who is currently incarcerated in Buffalo Federal Detention Facility pursuant to a final order of removal, seeks relief pursuant to 28 U.S.C. § 2241 as more fully set forth in the petition.¹ Petitioner also seeks permission to proceed *in forma pauperis*.

IT HEREBY IS ORDERED as follows:

1. Petitioner's request to proceed as a poor person is granted.
2. Within 45 days of the service of this order, respondent shall file an answer to the application with the Clerk of Court (and also serve a copy upon the petitioner) which shall respond to the allegations of the application and shall

¹Petitioner had earlier filed a petition in this Court (*Kadiku v. Smith*, 05-CV-0013Sr), which was transferred to the Eleventh Circuit Court of Appeals on June 10, 2005, pursuant to the REAL ID Act, of 2005, Pub. L. No. 109-13, § 106(c), 119 Stat. 231 (2005), because that petition challenged only petitioner's final order of removal. Petitioner claims in the instant petition that the Court misconstrued the earlier petition and that the earlier petition also challenged his continued detention. (Docket No. 1, Petition, n. 1). Petitioner does not appear to challenge the final order of removal in the instant petition but only his continued detention pending the Eleventh Circuit's review of the merits of the final order of removal.

state, as to every ground raised by the petitioner, whether the petitioner has exhausted administrative remedies. If any ground is alleged not to have been exhausted, respondent shall identify such ground. Alternatively, in the appropriate case, respondent may file a motion to dismiss the application, accompanied by pertinent exhibits which demonstrate that an answer to the application is unnecessary, by no later than **45 days** from service of this order.

Respondent also shall file by the above date a **memorandum of law** with the Clerk of Court (and also serve a copy upon the petitioner) addressing each of the issues raised in the petition and including citations of relevant supporting authority. Respondent is directed to accompany all citations to sections of the Immigration and Naturalization Act with reference to the appropriate sections of 8 U.S.C.

Petitioner shall have **25 days** upon receipt of the answer to file a written response to the answer and memorandum of law (or motion to dismiss).

3. The Clerk of Court shall serve a copy of the application, together with a copy of this order, by certified mail, upon the following:

- Charles Mule, Facility Director, Buffalo Federal Detention Center, 4250 Federal Drive, Batavia, New York 14020;
- Buffalo Field Office Director, Detention & Removal Office, Immigration and Customs Enforcement Department of Homeland Security, 38 Delaware Avenue, Buffalo, NY 14202;

- Secretary, U.S. Department of Homeland Security, Washington, D.C. 20528;
- Acting Director, Bureau of Immigration and Custom Enforcement, 425 I Street, NW Washington, DC 20536;
- Attorney General of the United States, Main Justice Building, 10th and Constitution Avenues N.W., Washington, DC 20530;
- United States Attorney for the Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202;
- James W. Grable, District Counsel for the Department of Homeland Security, 130 Delaware Avenue, Room 203, Buffalo, New York 14202.

THE PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND CORRESPONDENCE TO THE ATTORNEY APPEARING FOR THE RESPONDENT.

IT IS SO ORDERED.



HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

Dated: Aug. 26, 2005